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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,680	06/27/2003	Richard Kuffel	5300US-D1	8059

30173 7590 07/11/2005

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,680

Applicant(s)

KUFFEL ET AL.

Examiner

Lien T. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12,23-27,29-33 and 36-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12,23-27,29-33 and 36-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Applicant's election without traverse of Group I claims 1-12, 23-27, 29 and 36-46 in the reply filed on June 28 is acknowledged.

Upon further review, it is recognized that claims 30-33 depend from claim 29 and should have been included in Group I. Thus, examination will include claims 30-33.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12, 23-27, 29-33 and 36-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of prior art in view Johnson et al.

Applicant discloses in the specification that it is known to make brown sugar by mixing white sugar with molasses syrup in varying quantities in order to obtain a product which comprises final crystals of sugar that are brown due to covering with a film or molasses-flavored syrup. Applicant also discloses it is known brown sugar is a desirable ingredients in baked foods such as peanut butter cookies and chocolate chip cookies. However, brown sugar is susceptible to drying and forming lumps during

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storage because of the added moisture content of the molasses. The lumps are difficult to eliminate when the brown sugar is blended into a cookie dough or a muffin dough.

The prior art does not teach coating the sugar with a fat such as hydrogenated oil, or shortening before the mixing with molasses, the crystal area of the sucrose, the size of the sucrose crystals, storing in flexible pouch and airtight container and forming a dough by adding eggs, flour, emulsifier, supplemental fat and salt.

Johnson et al disclose a method of coating core material with a lipid material. The core material includes dextrose, sucrose, saccharin etc.. The process comprises the steps the spraying the core material as a spray pattern of particles, intercepting the spray pattern with a spray of the lipoidal material to envelope the core particles passing the resulting enveloped particles into a chilling zone to congeal the lipoidal exterior. The size of the encapsulated particles and the proportion of core to lipids can be varied over a wide range and are dependant upon the spray particles sizes and the flow rates of the streams. Final encapsulated particle size will range from about 5-150 microns or larger. The core is afforded a measure of protection by the congealed lipoidal coating against deterioration caused by exposure to the atmosphere; swelling of the core from exposure to moisture such as humid air and prevention of undesired interaction between the core and its surrounding materials. (see col. 2 lines 8-20, col. 3 lines 5-10, col. 4 lines 36-62 and col. 17-30)

It would have been obvious to one skilled in the art to first coat the sucrose as taught by Johnson et al before admixing the sucrose with molasses to obtain the benefit taught by Johnson et al. The lipid coating protects the sucrose from the moisture found

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in the molasses and the surrounding environment and thus will prevent lumping. The amount of lipid can readily be determined by one skilled in the art depending on the protection desired. The amount of molasses can vary depending on the degree of brownness wanted. Brown sugar comes in varying degree of color ranging from light yellow to dark brown. Johnson et al disclose using vegetable fat or animal fat; thus, it would have been obvious to one skilled in the art to use hydrogenated oil and shortening because they are common vegetable and animal fat. It would have been obvious to one skilled in the art to use fat having appropriate melting point such as the coating process can be carried out. Applicant has not shown any unexpected result or criticality with respect to the claimed melting point. Since sucrose is used, it is expected the size is the same as claimed; in any event, it would have been obvious to vary the size depending on the texture wanted. It would have been obvious to store the sugar in a flexible pouch for storage because sugar is commonly stored in such pouch. It would also have been obvious to store it in an air tight container to further enhance shelf stability by eliminating interference from the outside environment. Brown sugar is commonly used in baked product such as cookies; thus, it would have been obvious to add additional ingredients such as flour, eggs, salt, emulsifier, fat to the brown sugar when desiring to make cookies. All these ingredients are well known to be used in making cookies. It would have been obvious to add peanut if peanut butter cookies are wanted .

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Holland et al disclose coating dextrose with a fat.

Pearson et al disclose a process for preparing granulated sugar blends.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408.

The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 8, 2005


LIEN TRAN
PRIMARY EXAMINER
